



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2004

Ms. Jennifer S. Kaufman
Assistant General Counsel
Texas State Board of Medical Examiners
333 Guadalupe Tower 3 Suite 610
Austin, Texas 78701

OR2004-4866

Dear Ms. Kaufman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203328.

The Texas State Board of Medical Examiners (the "board") received a request for "[a]ll correspondence" relating to a named individual's "position and employment," including her employment application, interview questions, interview panel notes, interview panel members, and e-mails. You inform us that the board has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests confidentiality for this information under section 552.024 prior to the governmental body's receipt of the request for the information. *See* Gov't Code §§ 552.117, .024; Open Records Decision Nos. 622 at 5-6 (1994), 530 (1989) (addressing statutory predecessors). In this instance, the submitted documents do not contain anyone's home address, home telephone number, social security number, or family member information. Therefore, the board may not withhold any of the submitted information under section 552.117(a)(1).

Section 552.122 excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office

determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). Having considered your claim and reviewed the submitted information, we find that none of the submitted interview questions qualifies as a test item under section 552.122(b). Therefore, the board may not withhold any of the submitted information under section 552.122.

In summary, none of the submitted information is excepted from disclosure under sections 552.117 or 552.122 of the Government Code. As you claim no other exception to the disclosure of any of the submitted information, the board must release this information in its entirety.

You also ask this office to issue a decision that would permit the board to withhold testing information without the necessity of requesting an attorney general decision. We decline to issue any such decision at this time. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

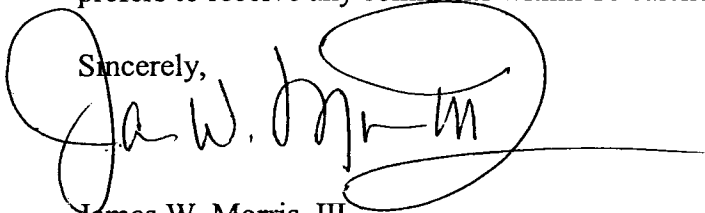
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, loopy flourish extending from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 203328

Enc: Submitted documents

c: Ms. Linda Janney
P.O. Box 417
Red Rock, Texas 78662
(w/o enclosures)